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No. 1385

In the Supreme Court of the United States

OCTOBER TERM 1968

J. C. LONG and ALBERTA S. LONG,
Petitioners,

vs.

BRUNSWICK CORPORATION, a corporation,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

BRIEF IN OPPOSITION

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The petition for certiorari in this case does not purport to raise any federal question. The sole contention is that the decision below is inconsistent with South Carolina decisions and statutes and therefore "violates the principles of *Erie R. Co.* v. *Tompkins*, 304 U.S. 64". The Court of Appeals and the District Court, conceding that South Carolina law was controlling, carefully analyzed the South Carolina authorities (pp. 17a-18a, 25a-30a).* District

* The page references are to the Appendix to the petition for certiorari.

Judge Hemphill and Chief Judge Haynesworth of the Court of Appeals have, of course, had long experience with South Carolina law. There is no good reason for this Court to review their ruling as to the law of that state. *Estate of Spiegel* v. *Commissioner*, 335 U.S. 701, 707-708 (1949). Ordinarily this Court accepts and does "not review, save in exceptional cases, the considered determination of questions of state law by the intermediate federal appellate courts". *Huddleston* v. *Dwyer*, 322 U.S. 232, 237 (1944).

The facts of the case and the arguments supporting the decision below are adequately set forth in the opinion of the Court of Appeals (pp. 21a-32a). Petitioners' principal contention is that the lease established an obligation in advance for the entire ten-year term, and not merely a monthly rental. The clause describing the rental obligation seems to be unclear as to this, but both courts below, analyzing the lease as a whole, found that other provisions showed that the latter meaning was intended (pp. 15a-16a, 27a-28a). These additional provisions do not appear to have been contained in the lease involved in the South Carolina case which petitioners assert to be in conflict with the decision below, but which the court below found distinguishable. *Leggett & Co.* v. *Orangeburg Piggly-Wiggly Co.*, 176 S.C. 449, 180 S.E. 483 (1935). The Court of Appeals also found that the *Piggly-Wiggly* case was out of line with subsequent Supreme Court of South Carolina decisions (pp. 28a-30a).

This Court does not sit to determine the correct interpretation of particular leases under state law.

Petitioners' second contention, that by taking a money judgment respondent forfeited its right to repossession, turns on a construction of South Carolina statutes. The

Court of Appeals reasonably found that the South Carolina "claim and delivery" statute was not the exclusive remedy and that it would not preclude a person from both seeking possession and a money judgment. Relying upon South Carolina authority, the Court of Appeals concluded that (p. 31a):

> "It would be unreasonable to hold that by obtaining a money judgment against his debtor, a creditor cannot reach the principal asset available to enforce that judgment, especially when a lien on this asset was bargained for as security for the extension of credit."

If petitioners were correct, they would not only have repossessed after three years a building costing over $90,000 (Tr. 177), but would also have recovered rentals amounting to $100,427 for the remaining seven years of the canceled lease, while respondent recovered nothing for its lanes, pin setters and bowling equipment. Petitioners' claim, therefore, has no more basis in equity than it does in law.

This case clearly presents no question worthy of review by this Court. The petition for certiorari should, therefore, be denied.

Respectfully submitted,

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